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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

ERIC MICHAEL BOLES,

Defendant and Appellant.

G040329

(Super. Ct. No. INF056687)

O P I N I O N

Appeal from a judgment of the Superior Court of Riverside County,  
Michele D. Levine, Judge. Affirmed as modified.

Michael B. McPartland, under appointment by the Court of Appeal, for  
Defendant and Appellant.

Edmund G. Brown Jr., Attorney General, Dane R. Gillette, Chief Assistant  
Attorney General, Gary W. Schons, Senior Assistant Attorney General, Steve Oetting and  
Felicity Senoski, Deputy Attorneys General, for Plaintiff and Respondent.

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A jury convicted defendant Eric Michael Boles of attempted murder (Pen. Code §§ 187, 664)<sup>1</sup> and found defendant committed the attempted murder willfully, and with premeditation and deliberation (§§ 189, 664, subd. (a)). In accordance with section 664, subdivision (a), the court sentenced defendant to life in prison with the possibility of parole on the attempted murder count. Defendant was also convicted of assault with a deadly weapon (§ 245, subd. (a)(1)) and misdemeanor violation of a protective order (§ 273.6, subd. (a)). But the only issue raised on appeal by defendant is whether substantial evidence supports the jury's verdict on the finding that the attempted murder was done willfully, and with premeditation and deliberation.<sup>2</sup> We affirm.

## FACTS

On November 7, 2006, Kimberly Boggs obtained a temporary restraining order against defendant, her longtime boyfriend. Tom Valarde, a friend of Boggs, assisted Boggs in obtaining the order and served it on defendant. In the weeks following service of the order, defendant called Boggs on numerous occasions, accusing her of engaging in a romantic relationship with Valarde and threatening to “knock . . . out” Valarde. Valarde called defendant after hearing about the threatening calls, and left a message in which he offered to “straighten[] out” their differences.

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<sup>1</sup> All further statutory references are to the Penal Code.

<sup>2</sup> Defendant also raises in his appeal two minor issues with regard to his sentence as provided in the abstract of judgment: (1) He is entitled to 483 days of presentence custody credit rather than the 479 days awarded by the court; and (2) the court's minutes and abstract of judgment should provide for an indeterminate life sentence rather than “7 years to life.” The People concede both issues, and we agree that these errors should be fixed. As such, we modify the judgment in accordance with the parties' request as described in the disposition below.

On November 29, 2006, Boggs, Valarde, and defendant arrived at the Indio courthouse in separate vehicles to attend the restraining order hearing. While outside the courthouse, defendant said to Valarde, “I’m here,” and Valarde responded by stating, “I’m here too.” After entering the courthouse, defendant approached Valarde and Boggs and angrily stated to Valarde, “We can take care of this now. We can do this right here.” Valarde called for the assistance of a bailiff, who escorted defendant away from Valarde. The court ordered the restraining order to remain in effect.

Boggs and Valarde left the courthouse together, about 10 minutes after defendant left. Defendant followed their vehicles; when the cars were all stopped at a red light, defendant got out of his truck, waived his arms at Boggs and Valarde, and angrily yelled, “I’m going to get you.” Boggs called 911, but defendant drove away before a police officer arrived. Boggs went to the police station pursuant to the officer’s instructions, and Valarde returned home to change his clothes for work.

Ten minutes after arriving home, Valarde walked outside to go to work; he saw defendant driving by his house slowly. Defendant yelled from his truck: “Now I know where you live . . . mother fucker.” Valarde got into his truck and drove away, but defendant drove his truck around the other side of the residential loop and met Valarde at an intersection. Both men got out of their trucks (the evidence is unclear as to who exited first), and defendant said to Valarde, “Come on, mother fucker” while holding a knife in his hand. Valarde swung a dog leash at defendant, and hit defendant with the metal clip on the end of the leash. Defendant then lunged at Valarde while swinging the knife in a slicing motion. Defendant cut across Valarde’s abdomen, slicing deeply enough to lacerate arteries in the interior of the abdomen and to expose his internal organs. Valarde fell on his back and tried to fight off defendant by kicking; defendant stabbed Valarde several times in his legs. While Valarde lay in a pool of blood, defendant said, “[C]ome get some now mother fucker, come get some now.” Defendant fled the scene after passing motorists stopped and yelled.

Police officers arrested defendant at approximately 12:10 p.m. after a 10 minute car chase. Defendant had a blood streak across his face and a bandage above his eye when he was arrested. A search of defendant's truck revealed a "Special Ops" knife with blood stains on it; articles of clothing with red stains; a piece of paper with the words "Tom Valarde, white Chevy, no plates"; and a map with a route to Valarde's home highlighted. While in custody, defendant made a call to his mother (which was recorded) in which he admitted he stabbed Valarde with one of his "special" knives, but stated that he believed he had acted in self-defense. In the months leading up to November 2007, defendant trained regularly for a sport known as "ultimate fighting." Defendant bragged in a (taped) phone conversation with his mother about his fighting prowess, claiming he had an undefeated record at the "underground" fights in which he had participated prior to his arrest.

## DISCUSSION

Defendant claims there is insufficient evidence to sustain his conviction for attempted murder with premeditation and deliberation. As argued in defendant's brief: "[T]here was evidence that [defendant] was mad at Valarde because he had served the temporary restraining order on him and because he believed that Valarde was having a sexual relationship with his ex-girlfriend, Kimberly Boggs. There was also evidence that [defendant] had threatened to knock Valarde out, and that [defendant] wanted to fight Valarde. Thus, evidence that [defendant] had a map to Valarde's house and a description of his truck showed substantial evidence that [defendant] had a preconceived plan to confront and fight Valarde. [¶] However, . . . this evidence did not support a finding that [defendant] had a preconceived plan *to kill* Valarde. After all, there is a big difference between a preconceived plan to fight someone and a preconceived plan to kill that person."

We review the entire record in the light most favorable to the judgment, and decide whether there exists substantial evidence from which any rational trier of fact could find the defendant guilty beyond a reasonable doubt. (*People v. Chatman* (2006) 38 Cal.4th 344, 389.) Where the evidence of guilt is primarily circumstantial, the standard of review is the same. (*People v. Holt* (1997) 15 Cal.4th 619, 668.) “‘Deliberation’ refers to careful weighing of considerations in forming a course of action; ‘premeditation’ means thought over in advance. . . . ‘The true test [of premeditation and deliberation] is not the duration of time as much as it is the extent of the reflection. Thoughts may follow each other with great rapidity and cold, calculated judgment may be arrived at quickly. . . .’” (*People v. Koontz* (2002) 27 Cal.4th 1041, 1080.) Courts often consider evidence of prior planning or motive, as well as the manner of attack, to assess whether the evidence supports an inference of premeditation and deliberation. (*Id.* at p. 1081.)

Substantial evidence supports the jury’s verdict. Defendant had a motive — his belief that Valarde had a romantic relationship with Boggs. Defendant learned of this presumed relationship more than three weeks before he attacked Valarde with the knife. This is not a case in which violence immediately followed the discovery of perceived romantic betrayal. Defendant’s efforts to intimidate, track down, and pursue Valarde were all consistent with either a plan to fight Valarde without killing him (as suggested by defendant) or premeditated intent to kill Valarde (as suggested by the prosecution). The jury was free to come to either conclusion when it interpreted the evidence. The jury’s conclusion is particularly reasonable in light of evidence indicating defendant was armed with a “Special Ops” knife when he confronted Valarde (despite defendant’s professed fighting abilities), defendant used the knife to cut open Valarde’s abdomen, and defendant continued to attack Valarde with the knife even after Valarde had suffered a deep wound to the stomach and had fallen to the ground.

## DISPOSITION

The judgment is modified to give defendant an additional four days of presentence custody credits, for a total of 483 days (420 days of actual custody and 63 days of conduct credits). The judgment is further modified to change defendant's sentence on count 1 to "life with the possibility of parole" rather than "7 years to life." The trial court is directed to prepare an amended abstract of judgment reflecting the modified sentence and to forward a certified copy to the Department of Corrections and Rehabilitation. As modified, the judgment is affirmed.

IKOLA, J.

WE CONCUR:

MOORE, ACTING P. J.

ARONSON, J.